

DELHI HIGH COURT

Dr. Sandhya Kabra

Vs.

University of Delhi, (Delhi)

C.W.P. No. 1657/92, 1672/92 and 1925/92

(B.N. Kirpal, C.L. Chaudhry & P.K. Bahri, JJ.)

7.9.1992

ORDER

B.N. Kirpal, J.

1. (Oral) - The problem of admission to the Post Graduate Course in the Medical Colleges is a complex one and has been the subject matter of numerous writ petitions filed in the various High Courts and also in the Apex Court. These writ petitions are no different.

2. In these writ petitions, the common question which arises for consideration is whether the petitioner in Civil Writ No. 1657/92, who joined the M.D. Course in Micro Biology in the University of Delhi in 1991, is entitled to change her course of study and whether the other petitioners in Civil Writ Petition No. 1672/92 and 1925/92 who took the 1992 examination are, likewise, entitled to change their courses.

3. On the recommendations of the Medical Council of India, Post-Graduate medical courses in the University of Delhi are conducted in association with different hospitals. The Postgraduate courses of study which are available are Doctor of Medicine (M.D.) in various clinical and non-clinical subjects, the course being of a duration of three years. In addition thereto, the Delhi University also has two year Diploma Courses, both in clinical and non-clinical subjects.

4. The recommendations of the Medical Council of India stipulate that the post-graduate student shall be under the direct supervision of a post-graduate teacher in the specialty concerned. It is mandatory that the student teacher ratio in all postgraduate degree courses be maintained at 1 :1. In accordance with the said

recommendations of the Medical Council of India, as soon as the post-graduate student joins the course/specialty, that student is put under the supervision/guidance of a particular teacher in the specialty in the institution concerned.

5. Such post-graduate degree student, before being permitted to take the final examination at the end of the third year, is required to submit a thesis in a specified area at the end of the second year. During the first two years, the post-graduate student receives training for selecting a subject and for preparing a thesis under the guidance of the supervisor concerned.

6. The post-graduate courses in medicine do not contemplate of mere attendance of lectures. For the purpose of imparting postgraduate teaching and training to the student, the University has recognized different hospitals and institutions based on the facilities and expertise available in the said institutions and hospitals. Once a student is selected to undergo post graduate study in a particular specialty in a particular institution, that student is then assigned to the said institution. The said student, apart from being a post-graduate student of the University, is simultaneously required to work as a regular doctor in the institution/hospital concerned, especially if the post-graduate course of the student is clinical in nature. The post- graduate student would be required to attend to patients in the particular department pertaining to his course of specialty and also discharge the duties of a doctor in the said department. The recommendations of the Medical Council of India also stipulate that in service training should be given to the candidates and the same requires a candidate to be a resident in the hospital campus with responsibility of management and treatment of patients entrusted to his care. A student so working in the hospital is paid monthly stipend for the work he does in the hospital.

7. Initially, it is only the local doctors who could get admission in the Post Graduate Courses in a particular University in the country. In other words, in order to be eligible to be admitted to a Post Graduate Course to a medical institution in a State, the candidate had to acquire the M.B.B.S. degree from within that State. This manner of selection of candidates for Post Graduate Courses was successfully challenged in the Supreme Court.

8. In the judgment reported as *Dr. Pradeep Jain & others v. Union of India*¹ the Supreme Court came to the conclusion that 100% reservation of the seats based

on residence requirement was not permissible. It was of the view that reservation of seats to the Post Graduate Medical Courses could not be more than 50%. The rest of the seats were required to be filled by an All India Competitive Examination to be conducted by the All India Institute of Medical Sciences. This reservation of 50% for the local students was, by a subsequent order, changed to 75% with the result that 25% of the Post Graduate seats in all the institutions in India were required to be filled by common examination held in All India basis. In common parlance, this 25% of the seats is known as All India quota.

9. Vide judgment dated 16th September, 1986 in Writ Petition No. 11178 of 1985, the Supreme Court further directed that the seats earmarked to be filled on the basis of the All India Entrance Examination shall be filled first. It further directed that it is only thereafter that the remaining seats will be filled up on the basis of the institutional preferences.

10. This was followed by the decision of the Supreme Court in the case of *Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad* ² At the time when the decision was given there was no uniform all India pattern with regard to the duration of the Post Graduate Courses. While in some Universities the Post Graduate Courses were to be for two years with horsemanship of one year, in other States the course of study was a full term of three years. The Supreme Court directed that a uniform practice should be followed and beginning from 1993, it ordered that there would be only one pattern in the whole of India namely a three-year course without any horsemanship. All the universities were directed to take timely steps to bring about such amendments so that the uniform pattern could be implemented from 1993. The second important direction which was issued by the Supreme Court in *Dr. Dinesh Kumar's* case (supra) was with regard to the programmed relating to the selection examination. In this regard, the direction of the Supreme Court was as follows

"What remains now to be dealt with is the finalization of the programmer relating to the selection examination. As already decided the selection examination shall be conducted by the All Indian Institute of Medical Sciences, New Delhi. The announcement for holding of the selection examination shall be made on October 1 of every year and a full four weeks time would be made available to candidates for making their applications. After the applications are received not later than six weeks

from October 1, the same would be scrutinized and duly processed and admit cards would be issued, Examination shall be held on the second Sunday of January. The results of examination shall be announced within four weeks from holding of the examination. Admission shall commence two weeks after the declaration of results. The last date for taking admission shall be six weeks from the date of the announcement of results but the Head of every institution shall be entitled to Condon delay up to seven days for reasons shown and grounds recorded in special cases. The courses of study shall commence in every institution providing such study throughout the country from May 2. Notification announcing examination, publication of result and allotment of place of admission (keeping preference in view and our directions regarding preference of lady candidates in places of proximity to residence) shall be published in two successive issues of one national paper in English having large circulation in every State and at least in two local papers in the language of the State as quickly as possible."

11. The importance of the time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case (supra) has been reiterated by it from time to time. In *Mridula Avasthi & Ors. v. University of Delhi & ors.*,³ on page 574 the Supreme Court reiterated that " under the Scheme intended to apply to the whole country the course has to begin on May 2, 1988." Again on page 575, the Union of India was directed to fill up the seats at an early date "so that the time schedule may not be affected."

12. In the case of *Dr. Jeevak Almast v. Union of India*,⁴ the Court was concerned with admissions to Post Graduate Medical Courses pursuant to the All India Entrance Examination which was held for the academic year 1988-89. In Paragraph 6, it was observed by the Court that : "We cannot lose sight of the fact that a tight frame of time has been fixed by the previous order of this Court in regard to admission as also commencement of studies. We have not the least intention to disturb that schedule." Again in paragraph 9 of the said judgment, it was reiterated that : "We reiterate that we have no intention to interfere with the scheme which has been approved except to the extent that the dates of admission and commencement of classes may have to be varied to give effect to the present order." This was a case where a large number of seats were not filled, under the 25% All India quota, with the result that 1600 seats were

reverted to the States and the Medical Colleges located therein. The directions were issued that these seats should be filled as expeditiously as possible but within the time-frame fixed by the Court.

13. The Supreme Court in the case of *State of Bihar v. Sanjay Kumar Sinha*,⁵ took serious view of the default being committed in not adhering to the time schedule which had been fixed by that Court in Dr. Dinesh Kumar's case (supra). Non-compliance of the said directions were dealt with by the Supreme Court in the said case in the following words:

"Obviously the relevant directions have not been followed by the examining body for the current year. Similarly the State of Bihar did not follow the directions of this Court while drawing up its prospectus. If the courses of study are to commence from May 2, the last qualifying date could not have been fixed as May 31, 1989. It has been reiterated before us that several States have not been following the directions. Instead of issuing notice to the States and Union Territories for examining the correctness of the allegations of delay and non-compliance of the directions, we have thought it appropriate to indicate that everyone including the States, Union Territories and other authorities running Medical Colleges with postgraduate courses are bound by our order and must strictly follow the time schedule indicated in paragraph 6 of the order. We have not proceeded against the defaulting authorities for violation of the Court's order, hoping that there would be no recurrence of it but we would like to administer a warning to everyone that if it is brought to our notice that there has been any violation a serious view of such default shall be taken. We hope and trust that everyone concerned shall comply with the time frame strictly and there would be no lapse in this regard in future."

14. Again, in another case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru Medical College, Allahabad*,⁶ the Supreme Court observed that the States were obliged to initiate action for admission in appropriate time so as to allow commencement of the course for the year 1990 w.e.f. 2nd May, 1990. It further held that the failure to do so on the part of the State of U.P. and the seven medical colleges of the State amounted to clear act of willful default or total callous indifference to the binding orders of the Court. Directions of the Supreme Court were required to be meticulously complied with and while no action for initiating the contempt proceedings was taken, nevertheless exemplary costs were awarded against the State of U.P. and also the principal of

each of the seven medical colleges. The State of U.P, was directed to pay cost of Rs. 20,000/- while each of the principals was ordered to pay Rs. 500/- as costs and it was observed that these costs shall be recovered personally from their-salary and they shall not be entitled to reimbursement of the same from the State Exchequer.

15. In *Writ Petition Dr Subodh Nautiyal v. State of U.P. & Ors.*,⁷ a bench of the Supreme Court on 10th January 1991 observed that :

"We have already indicated in our previous orders that the course throughout India is intended to commence on a particular date and, therefore, admissions must be over prior to the date of said commencement. The intention of this Court has been to appropriately regulate the teaching in Medical Colleges both at the Under Graduate as also in the Post Graduate level. The happenings which had been noticed by this Court and which are being placed before the Court now and then clearly indicate that the intention of this Court is not being kept in view by the authorities charged with the implementation. Therefore, the Scheme is not getting enforced in the proper way."

16. Lastly, in a more recent judgment of the Supreme Court in the case of *State of Uttar Pradesh v. Dr. Anupam Gupta, etc., Judgments* ⁸ observed in paragraph 12 and 14 as follows :

"12. It is next contended by Shri Yogeshwar Prasad that the courses were started from October 30, 1990 and in terms of the orders of this Court it shall be deemed to have been commenced from May 2, 1990, the direction as given in the impugned judgments for admission after more than a year, is illegal. To maintain excellence in the academic courses, the delay defeats the claim for admission, though posts are vacant. In *Pramod Kumar Joshi v. Medical Council of India*, ⁹ dated February 19, 1991 this Court held that the course for the year 1991 is almost completed and it would not be proper to allow admission belatedly. In *Dr. Subodh Nautial v. State of U.P.* ¹⁰ there is a delay of four months in giving admission, and this court held that, "even according to Mr. Pandey the course has started in September for the session. This is a technical course and to admit a student four months after the commencement would not at all be correct."

14. Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that

the students would have full opportunity to study full course to meet their excellence and come at par excellence. Admissions in the midstream would disturb the courses and also works as handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained."

17. After the decision of the Supreme Court in Anupam Gupta's case, another writ petition was filed by those candidates who have sought admission to the Post Graduate Medical Courses in *U.P. (sic) being Ombir Singh v. State of U.P.*,

¹¹ The contention which was raised in this writ petition was that in respect of the academic year 1992, out of 439 seats available in the General category 139 seats were still lying vacant, in addition to the seats which were lying vacant in the case of reserved category for SC/ST. It was submitted that no seat should be allowed to remain vacant and the State Government should be directed to fill the said seat. The Supreme Court further observed that the State Government was free to issue orders relaxing the requirement of minimum marks to such extent as may be the necessity of maintaining academic standards for admission to Post Graduate Courses and, after such relaxation, may fill up the vacant seat directly in accordance with merit. No relief was granted by the Supreme Court in relation to any vacancies which had existed in respect of the earlier years of 1990 or 1991.

18. Thereupon a fresh writ petition was filed being *Dr. Indu Kant v. State of*¹² This and the connected writ petitions were decided by the Supreme Court on 11th August 1992 and it dealt with the contention of the petitioners that for the year, 1990, 256 seats remained vacant in Post Graduate Courses while 180 seats remained unfilled in the year 1991. The submission of behalf of the petitioner was that just as directions have been given in respect of the year 1992 in Ombir's case (supra) similarly the Supreme Court should require the State Government to lower the minimum qualifying marks and direct the filling up of the vacant seats of the years of 1990-91 in order of merit. This petition was opposed by the State Government who inter "a contended that if the candidates of 1990 and 1991 batches are admitted now, then they will have to join along with the 1992 batch and this would increase the total strength of the Post Graduate students for the year 1992. It was further submitted that it would not

be just and proper to grant admission to such candidates only who have filed the petitions before the High Court under Article 226 or before the Supreme Court under Article 32 and to deny such right to other candidates who had secured higher marks in merit in the entrance examinations of 1990 and 1991 but had not approached any of the two courts, The contentions of the State Government found favor with the Supreme Court and it was observed that:

"We find justification in the difficulties pointed out by the State Government in doing so. Granting admission to the candidates of 1990 and 1991 batch now and to allow them to join with the batch of 1992 is bound to increase the total strength of Post Graduate students in 1992. This would not only be in violation of the directions of the Medical Council of India, but would also put an additional financial burden on the State Government. In any case, the State Government itself is vehemently opposing such request made on behalf of the candidates of 1990 and 1991 and we cannot give any direction to the State Government in regard."

19. The clear and unambiguous directions of the Supreme Court in the various judgments and orders referred to above herein are that the admissions to the Post Graduate courses must be completed within the time-frame laid down by the Court in Dr. Pradeep Jain's case (supra) and, secondly, a course must begin after the admissions are completed. In this context another factor which is very clear is that the seats which fall in the All India quota but are not filled on the basis of the examination would revert to the local institutions and should be filled by them as expeditiously as possible.

20. From the year 1988, in the University of Delhi, pursuant to the directions issued in Dr. Dinesh Kumar's case, the Post Graduate degree courses have been for duration of three years while the Diploma Courses are for two years each. Between the year 1988 and 1991 one important feature of the admission policy of the Delhi University has been to issue successive admission lists. In fact, more than one list have also been issued by the Government of India for the purpose of filling up as many vacancies as possible under the All Indian quota. More than one admission list had been issued by the Delhi University not only for the purpose of granting admission to the students who are on the waiting list but also for the purpose of allowing change of course.

21. The students who took the entrance examination for the Post Graduate courses in the Delhi quota used to indicate their preferences of courses and institutions. Even though some of them secured admissions to the various courses in the first admission list, the subsequent admission list used to be issued which would enable some of these candidates to change courses or institutions of their higher or better preference. This normally resulted in more vacancies being created and a chain reaction would follow which would result in a succession of admission lists being issued and the admissions not being completed for the number of months.

22. In the year 1992 a new policy has been promulgated, which has been challenged in Civil Writ Petition No. 1672/92 and 1925/92, which does not allow any change of course or institution. Details of this new policy will be dealt with subsequently.

23. During the course of the arguments, it has been contended that notwithstanding the aforesaid directions by the Supreme Court regarding the need of strict adherence to the time schedule laid down in Dr. Dinesh Kumar's case (supra), nevertheless, a large number of orders have been passed by the Supreme Court and by this Court directing change of courses and granting of admission to the Post Graduate courses even though a number of weeks or months may have elapsed since the start of the course.

24. Before dealing with those orders, it is important to take note of another order passed by the Supreme Court which, in our opinion, has been misinterpreted by the authorities and has been causing considerable delay in the completion of the admission to the Post Graduate courses. It was represented before us that on 10th July, 1991, the Supreme Court in Dr. Dinesh Kumar's case (supra) had passed the following order :

"Request for adjournment for filing counter affidavit is rejected. The matter is taken up *ex parte*. We find that the submission of the petitioners is reasonable. We make it clear that the outer limit for both allotment and transfer shall be 7th February of the year following the commencement of the session."

25. It was strenuously contended that this order passed by the Supreme Court (Hon'ble the Chief Justice of India and Hon'ble Mr. Justice Kuldeep Singh) clearly implied that admissions could be effected and allotment and transfers

made up to the following the commencement of the session.

26. In the certified copy which was initially placed before us, the indication seems as if the aforesaid order had been passed in the main writ petition itself. The names of the counsel who appeared in Dr. Dinesh Kumar's case (*supra*) as indicated in the report of 1987(4) SCC 459 remain unchanged in this certified copy. It was, however, felt that, perhaps, there is a mistake in the aforesaid copy of the order which had been filed in this court. The Union of India had itself understood this order to mean that it was free to issue various lists for filling up the All India quota up to 7th of February of each succeeding year. Mr. Mariaputham, the learned counsel for the respondent, during the course of the hearing inspected the record of the Supreme Court and produced a fresh certified copy of the aforesaid order dated 10th July, 1991, duly corrected by the office of the Supreme Court.

27. The mystery which has now been solved is that the said order of 10th July 1991 was not passed in the main writ petition of Dr. Dinesh Kumar, but was passed in I.A. No. 1/91 which had been filed on behalf of the State of Goa before the Supreme Court. In this application, filed in December 1990, the State of Goa had contended before the Supreme Court that there was only one Medical College and one Dental College in that State and that its courses of study commences from August every year. The prayer in this application was that the State of Goa may be excluded from the scheme of All India reservation of seats because inordinate delay for making available the candidates for admission on time is deeply resented by the local students community. In the alternative, the prayer was that direction be issued to the Ministry of Health & Family Planning for making available the candidates to the State of Goa for admission against the All India reservation both for Under Graduate and Post Graduate courses in time failing which these seats should be ordered to have lapsed latest by 30th September each year. It is on this application that the aforesaid *ex parte* order was passed by the Supreme Court. In the revised certified copy of the order dated 10th July, 1991, the names of the counsel who had originally appeared in the case were deleted and, in its place, only the names of the counsel who appeared in this application and in another application, I.A. No. 2/91, were indicated.

28. It is clear, therefore, that the date of 7th February mentioned in the order dated 10th July, 1991 was only in the context of the aforesaid application, I.A.

No. 1/91, of the State of Goa and by the said order the outer limit for allotment and transfer of 7th February was only restricted to the State of Goa and to no one else and that too in the peculiar circumstances of the State of Goa where the first choice of the State of Goa was to opt out of the All India quota and in the alternative it had prayed that the All India quota should be filled by the end of August of each year. We cannot interpret the order to mean that it has superseded or in any way altered or departed from the time schedule which has been laid down by the Supreme Court for the first time in Dr. Dinesh Kumar's case (supra) and thereafter reiterated by it in numerous decisions and even as recently as in Subodh Nautial's and in Dr. Anupam. Gupta's case (supra). Even the University of Delhi has misinterpreted the aforesaid order of 10th July, 1991, possibly due to no fault of theirs but because it had before it on incorrect copy of the order dated 10th July, 1991 and no trouble was taken to verify the correctness of the same.

29. It is the incorrect certified copy of the order which was, initially, filed by the counsel for respondent and it is only due to some research by the learned counsel that the correct factual position has emerged.

30. We have, therefore, no hesitation in coming to the conclusion that the time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case (supra) stands unaltered and there is no general or specific direction issued by the Supreme Court allowing admissions in various Universities to be made up to 7th February of the year following the beginning of the academic year.

31. In the light of the aforesaid decisions of the Supreme Court, it would be now appropriate to consider, in some detail, the facts in the case of Dr. Sandhya Kabra. She completed her M.B.B.S. in the year 1990 and took the entrance examination on 28th April, 1991. In June 1991, the result of the examination for Post Graduate courses was declared by the University of Delhi and the petitioner was placed at serial No. 109. On 26th July, 1991, the petitioner was asked to appear before a committee and on 10th August, 1991 she was informed that she had been allotted M.D. (Microbiology) in Maulana Azad Medical College. On 19th August, 1991, the petitioner joined the said course. Long thereafter, on 13th December, 1991, the Board of Research Studies decided that no admission to Post Graduate courses shall be made after 7th February, 1991, "as per the directive of the Supreme Court and opined by the senior counsel in his legal advice."

32. The reference to the direction of the Supreme Court is obviously to the order dated 10th July, 1991 to which we have already referred. On 16th December 1991 27th December, 1991, 14th January, 1992 and 4th February, 1992, the Delhi University issued second, third, fourth and fifth admission list respectively. In all these lists, as was the practice at that point of time, changes of courses and institutions were allowed. No list was issued by the Delhi University thereafter presumably because the cutoff date of 7th February, 1992 had been determined by the University vide earlier resolution dated 13th December, 1991. On 8th February, 1992, the petitioner made a representation to the Registrar, Delhi University in which she stated that, in order of preference, her choice had been that of M.D. (Paediatrics) at No. 1, M.D. (Medicine) at serial No. 2 and M.D. (Microbiology) was only her third choice. She requested that she should be transferred from M.D. (Microbiology) to M.D. (Paediatrics) or M.D. (Medicine). The aforesaid request was not acceded to. On the contrary, at a meeting which was held on 27th February, 1992 of the Board of Research Studies for Medical Sciences of the University of Delhi, it was reiterated that the admissions to Post Graduate courses stood closed on 7th February, 1992. Before this date, on 10th January, 1992, on the basis of the 5th admission list which was issued on 4th February, 1992, letters of admission were issued.

33. The contention of the petitioner before this Court is that when on 4th February, 1992 5th admission list was issued and the petitioner had made a representation for change of course on 8th February, 1992, the same should have been accepted because it is only thereafter that letters of admission, based on the 5th admission list, were issued on 10th February, 1992. The seat which the petitioner desired to obtain was out of the All India quota which had not been filled by 7th February, 1992.

34. According to the brochure, issued by the All India Institute of Medical Sciences, the schedule with regard to All India quota examination was that the competitive test was to be held on 20th January, 1991, results were to be declared on 7th March, 1991, allotment of seats was to be made on 7th April, 1991, last date of admissions on the basis of the first merit list was to be 22nd April, 1991 and the last date of admission from the waiting list was required to be 10th May, 1991. The course study was required to commence on 2nd May, 1991. In actual fact, however, the first list was issued on 2nd May 1991, the second list was issued between 17th September, 1991 and 7th October 1991,

third list was issued on 20th December, 1991 and the fourth list was issued on 24th January, 1992. The second, third and fourth lists were presumably issued on the erroneous reading of the aforesaid order of the Supreme Court dated 10th July, 1991.

35. On behalf of the University of Delhi, it has been contended by the learned counsel that even though no list was issued for the all India quota after 16th January, 1992, the seats were not surrendered though an unsigned letter dated 13th March, 1992 was received. In this letter, it was stated that all the seats which remained unfilled stand surrendered. As the said letter did not bear any signature, on 2nd April, 1992, the University of Delhi wrote to the Assistant Director General, Health Services requiring him to confirm the contents of the aforesaid letter dated 13th March, 1992. We are informed that no reply was received to this communication. It is thereafter, that the present writ petition was filed by the petitioner on 28th April, 1992.

36. On behalf of the respondents, it is contended that as the course had commenced in August 1991, this Court should not allow change of subject to the petitioner at this late stage. It is not denied that the last admission list was issued by the Delhi University on 4th February, 1992, nevertheless the submission of the learned counsel is that if the petitioner could have made a representation on 8th February, 1992, there is no reason as to why the petitioner should have waited till the end of April 1992 before filing the present writ petition. On merits, the contention of Sh. Mariaputham has been that the Ministry of Health used to write letters surrendering the seats which were not filled under the All India quota and no such letter was received by the University of Delhi till 7th February, 1992. The only letter which was received was dated 13th March, 1992 and that also did not bear any signatures. Despite a clarification having been sought vide letter dated 2nd May, 1992, no communication was received from the Ministry of Health indicating that the seats which remained unfilled stood surrendered.

37. It is not necessary for us to go into the question as to whether any fault could be found in the seats not being surrendered in time because we are of the opinion that, at this late stage, the petitioner cannot be permitted to change her course of study.

38. As already noted, the Supreme Court had laid down, in clear and categorical

terms, that the course of study should commence, after all the admissions have been completed, on 2nd May, 1992. The petitioner has now been in this course for over one year. Even at the time when the writ petition was filed on 28th April, 1992, more than eight months had elapsed after her joining the course of M.D. (Microbiology). If the petitioner was to be allowed to change the course, at this stage, the result would be that all the expenses and time which had been spent in the petitioner pursuing the course of M.D. (Microbiology) would be lost. We are given to understand that it costs the exchequer about 5 lacs of rupees per annum towards the Post Graduate education of a student. If the petitioner is allowed to change the course, all this expense which had been incurred would be lost for no valid reason. Secondly, if the petitioner was to be allowed a change from the course of M.D. (Microbiology) that would, unnecessarily, result in the starting of a chain reaction. The seat of M.D. (Microbiology) for the year 1991 would stand vacated and that in turn will have to be allotted to a candidate who had opted for M.D. (Microbiology) but had not obtained it because of the lower position in the merit list. If all these resultant vacancies had to be filled, it would be impossible for a course to commence.

39. The Supreme Court has, as already indicated, hereinabove, time and again reiterated the necessity of commencing the Post Graduate course in time. In Subodh Nautiyal's case (supra) even though admissions had been granted on 4th January, 1991, the Supreme Court declined to grant any relief to the petitioner, when the case came up before it on 10th January, 1991, within one week of the issuance of the last list of admission. The Supreme Court observed that the course had started in September and "this is a technical course and to admit a student four months after the commencement would not at all be correct. We, accordingly, reject the application." In the present case the course commenced and the petitioner joined on 19th August, 1991 while the writ petition was filed more than eight months thereafter. The aforesaid observations of the Supreme Court in Subodh Nautiyal's case (supra) are clearly applicable in the present case.

40. In Dr. Anupam Gupta's case (supra) the aforesaid observation was reiterated and it was observed that "to maintain excellence in academic course, the delay defeats the claim for admission, though posts are vacant," We have already quoted the relevant observations of the Supreme Court in an earlier part of the judgment. It was submitted by learned counsel for the petitioner that in a large

number of writ petitions filed in this Court, orders were issued directing change of courses and admissions being granted. The learned counsel also sought to refer which were similar in nature. In our opinion, however, it is not necessary to refer to them in any great detail because in none of those cases was any contention ever raised that because of the courses having started, admissions or change of courses should not be permitted long after the commencement of the course. In any case, the recent pronouncements of the Supreme Court, which have been referred to, hereinabove, are binding precedents and it has been reiterated by the apex court in no uncertain terms that even though vacant seats may exist still admissions should not be granted at a late stage. In any case, in no decision has the Supreme Court directed allowing change of courses and that too at a late stage.

41. It has been submitted by the learned counsel that the admission which had been granted to the course for M.D. (Microbiology) was only provisional and therefore it was not too late for allowing the change of course. There is no merit in this contention. It is no doubt true that originally when the admissions are granted it is stated that the same is provisional but according to Clause XI of the Bulletin of Information issued by the University of the Delhi, the provisional nature of the admission is explained. The said clause reads as follows :

"XI. Confirmation of Admission :

The admission of the candidate shall be provisional in the first instance.

The Head of the Department concerned after 4 months of the commencement of the course, but not later than 6 months of the said commencement, shall submit through the Head of the Institution, a report to the Board of Research Studies for Medical Sciences regarding performance of the candidate. If the performance is stated to be satisfactory and such other information as is required by the Faculty Office is supplied by the candidate regarding his admission, his provisional admission shall be confirmed. If the performance is not found satisfactory, the admission shall be cancelled and the candidate will be informed about this within one month of the receipt of the report of the Head of the Institution."

42. It is clear from the above that the use of the word 'provisional' is only for assessment of the performance of the candidate and if it is not satisfactory, the

admission is not confirmed. This is akin to placing a candidate on probation. The admission which has been granted is final but this clause provides that a candidate may not be allowed to continue with this course of study if the performance of the candidate is not found to be satisfactory.

43. Before concluding in regard to Sandhya Kabra's case, it is pertinent to refer to the observations of the Supreme Court in the case of *Dr. Ajay Pradhan v. State of U.P.*¹³ explaining the nature of the course and while holding that there was no right to admission to a seat falling vacant in the midst or towards the end of the academic year. It was observed by the Supreme Court as follows:

"10. As per the Regulations framed by the Medical Council of India, the PG course in MD/MS is a three years' course including one year's house job. This is followed by at two years' degree course. The two years' degree course in a medical college as prescribed by the Medical Council of India is a period of intensive training. A post-graduate student has not only to write a dissertation or thesis under the supervision of the Professor or Associate Professor who is his guide, but has also to take part in seminars, group discussions, clinical meetings besides attending classes. There is also emphasis on in service training not on didactic lectures. The in service training requires the student to be a resident in the campus and he has the graded responsibility in the management and treatment of patients entrusted to his care. For this purpose, adequate number of posts of clinical residents or tutors are created. The period also includes adequate training in the basic sciences of Anatomy, Physiology, Bio-Chemistry, Bio-Physics, Pharmacology and Pathology in all aspects relevant to the specialty concerned. He is also required to participate in the teaching and training programmers of undergraduate students or interns in their subjects. The examination for the PG course in MD/MS consist of : (i) thesis or dissertation, (ii) written papers, (iii) clinical, oral and practical examination. There are four theory papers for the post-graduate degree examination, of which one has to be on Applied Basic Sciences. The clinical examination is aimed at eliciting the knowledge of the student to undertake independent work, as a Specialist. The oral and practical examinations are meant to test his knowledge on investigative procedures, techniques and other aspects of the specialty. The syllabus prescribed by the Medical Council of India for the PG course in MD/MS as also the student teacher ratio of 1:1 virtually negative the right of admission to a seat falling vacant in the midst of or towards the end of the academic year to which

it pertains."

44. One other contention raised by Sh. Mariaputham, on behalf of the respondent, was that the petitioner in any case cannot be allowed change of subject for the simple reason that there are candidates in the merit list who are senior to her and had also opted for the same subjects namely, M.D. (Paediatrics) and M.D. (Medicine). In this connection the learned counsel relied upon the decision of the Supreme Court in the case of *State of Kerala v. T.P. Roshana*,¹⁴ This case was concerned with admission to Medical Colleges and at page 589, it was observed by the Supreme Court that the selection of the students to whom relief was to be given was not to be confined to those who have moved the Supreme Court or the High Court because

"The measure is academic excellence, not litigative persistence. It will be thrown open to the first 30, strictly according to merit measured by marks secured."

45. This was followed by the Supreme Court in the case of *Arti Sapru v. State of J & K*¹⁵ While granting admissions to Medical Colleges the State was directed to fill up the seats on the basis of open merit and the relief was not confined to the petitioners therein.

46. Again in *Punjab Engineering College v. Sanjay Gulati*¹⁶ the Supreme Court was concerned with admissions to Engineering College. The question which arose was whether 16 writ petitioners were to be granted admission to the 16 available seats or were the admissions to be made according to merit. It was observed by the Supreme Court that "we are unable to accept the submission made by the petitioners that they should be preferred for admission irrespective of merit. The circumstances that they filed writ petitions in the High Court, other similarly aggrieved did not, will not justify the granting of admission to them by ignoring those others who were higher up in the merit list." In arriving at the aforesaid conclusion, the Court followed its earlier decisions in the case of *State of Kerala v. T.P. Roshana*, (supra) and the case of *Ajay Hasia v. K.M. Sehravardi*,¹⁷ and *Arti Sapru's* case (supra).

47. Mr. Swatanter Kumar, however, submitted that relief should be granted only to the petitioners who appear before the Court. His contention was that if the persons who are aggrieved do not approach the Court, it would mean that they have waived their right, Reliance in this behalf was placed by the learned

counsel on the case of *A. Periakaruppan v. State of Tamil Nadu*,¹⁸ In our opinion, reliance is misplaced. In that case selections for admission to Medical Colleges were quashed. The question arose as to whom could the relief be granted. The Court took note of the fact that there were 24 seats which remained to be filled up. There were 80 persons who were on the waiting list. Some of the successful applicants had moved the High Court of Madras for relief which was similar to the one by the petitioners in this case but that relief had not been granted to them. Some of those petitioners had intervened in the Supreme Court. There were, however, some non-selected candidates who, according to the Supreme Court, showed no interest in challenging the selections. It was under these circumstances that the Supreme Court observed that these candidates must be assumed to have abandoned their claim and it was too late for them to press their claim. The Supreme Court then directed selection to the 24 unfilled seats to be made from among those candidates who were in the waiting list and those who had filed writ petitions in the High Court and also the two petitioners who had filed the petition in the Supreme Court. A Committee was constituted which was required to interview all these persons and to prepare a gradation list. A careful examination of this list clearly shows that the relief was not confined only to the candidates who had approached either the Madras High Court or the Supreme Court but, on the contrary, the Admission was to be made only on the basis of merit to be adjudged by a Committee who was required to interview all eligible candidates. The ratio of this decision clearly runs counter to the argument of the learned counsel.

48. In *State of Orissa v. Dr Asim Kumar Mohanty*,¹⁹ it is no doubt true that relief of granting admission was restricted only to the candidates who had approached the Court but this was for the reason, that those candidates had succeeded and had obtained favorable orders in the writ petition filed by them before the High Court of Orissa. It was the State of Orissa who filed an appeal and the contention that there were other candidates who were superior to the petitioners had not been raised before the High Court, It was in this behalf that the Supreme Court observed that

"this contention appears not to have been placed before the High Court and has been raised for the first time in the present Forum at the time of arguments."

49. While recognizing that ordinarily the more meritorious candidates would be

entitled to preference over the others, the Supreme Court, further, observed that in the circumstances stated they were not of the view that the objection raised by the State had any force. It is clear, therefore, that the Supreme Court declined to interfere with the discretion which had been exercised by the High Court primarily for the reason that the contention had been raised for the first time in arguments before the Supreme Court. The Court did not lay down as a proposition of law that meritorious candidates were to be ignored merely because they did not choose to approach the Court.

50. The decision of a Single Judge of the Madras High Court in the case of *R. Manjunath v. Indian Institute of Technology*,²⁰ and of the Punjab & Haryana High Court in *Sumedha Kalia v. State of Haryana*,²¹ where relief was granted to the petitioners and not the candidates who had a higher merit undoubtedly support the contention of Mr. Swatanter Kumar, but in our opinion, they do not lay down the correct law, The said decisions of the two single judges do not refer to the observations of the Supreme Court in the case of T.P. Roshana (supra), Arti Sapru (supra) and *Punjab Engineering College v. Sanjay Gulati* (supra).

51. Lastly, the learned counsel for the petitioner referred to *Deepak Sibal v. Panjab University*,²² That case pertains to admission to the Law Faculty and due to the mistake of the respondents, petitioner was not granted admission. The Court directed an additional seat to be sanctioned and admission granted to the petitioner. We fail to understand as to how this judgment can be of any assistance to the petitioner because admission to the Post Graduate courses is made on the basis of a competitive examination and when merit is a criteria for granting admission, it must stand to reason that irrespective of the fact as to who approaches the Court if any seat has to be filled then, all things being equal, merit must prevail.

ADMISSION FOR THE Year 1992

52. In the affidavit filed on behalf of the Delhi University, reasons have been given as to what were the drawbacks of the Scheme of admission which was prevalent till the year 1991, It was firstly stated that shifting of students from one subject to another after the course had commenced disrupted their studies and prevented the University from providing adequate teaching and training to them. Secondly it was stated that the time already spent by the candidates in

acquiring proficiency and specialized training' skills and expertise while pursuing the earlier subject was wasted with the change of subjects.

53. Thirdly, it was stated that the duration of the intensive training in the specialization to which a student is later admitted, on change of subject being allowed, was reduced by the amount of time already spent by him while studying a different subject. This would seriously and adversely affect the quality of training that was imparted to the student which had a direct adverse bearing on the proficiency being acquired by that candidate. It was not possible in two years to impart the required training, expertise and skills which a student was expected to acquire by undergoing the course for three years.

54. Fourthly, it was averred that on permitting the students to shift from one subject to another after the commencement of the Course used to adversely effect patient care in hospitals and institutions. Elaborating this contention, it was submitted before us that on a student being selected to undergo Post-Graduate studies in a particular specialty in a particular institution, he is assigned to an institution. Apart from being a Post Graduate student, he is simultaneously required to work as a regular doctor in the hospital to which the institution was attached. The recommendations of the Medical Council of India stipulate that in service training should be given to the candidates and the same requires a candidate to be a resident in the hospital campus with responsibilities in the management and treatment of patients entrusted to his care. If a student, who has already started discharging his duties as a doctor in a particular hospital and in a particular department and has started attending to patients providing necessary care and treatment to them, is allowed to shift from one subject to another and from one institution to another, then the work in the hospitals is adversely effected and the ultimate adverse impact of the same would be on the patients being treated in the said hospital. It was emphasized that it was not in the interest of proper patient care in different hospitals that doctors should be permitted to shift from one subject to another or from one institution to another.

55. Fifthly, it was indicated that a student who works in the hospital is paid monthly stipend for the work he does in the hospital which sum of money is incurred by the Government which, in fact, is a burden which is borne by the tax-payer and if a student is allowed to shift from one subject to another or to change the institution then the money which is spend in his training prior to the

change being allowed would be completely wasted.

56. Sixthly, it was submitted that permitting students to shift from one subject to another by following the method of merit-cum-choice resulted in a number of seats going waste. The process of filling up seats was a struggle against infinity and at the end of the process it was found that the system of merit-cum-choice being followed by the University was responsible for a number of seats going waste at the time when admissions are closed.

57. Lastly, it was submitted by the learned counsel for the respondent that according to the recommendation of the Medical Council of India, the pupil-teacher ratio had to be of 1:1. It was contended, and in our opinion rightly so, that if changes in the subjects or institutions are allowed, the result may be that this ratio may be disturbed. As an example, it was stated that if the petitioner, Sandhya Kabra, who had joined M.D. (Microbiology) in 1991 is allowed to change her subject to M.D. (Pediatrics) in the year 1992 then the specialist to whom the Post Graduate candidate is supposed to be attached would have an additional student. The vacancies for the year 1992 for M.D. (Pediatrics) had been worked out in such a manner that the ratio of 1:1 is maintained but if in addition to the number of seats which were worked out for the year 1992 an additional seat has to be provided to Sandhya Kabra in the year 1992, the result would be that the said ratio would be disturbed. At the same time, the seat vacated by Sandhya Kabra in M.D. (Microbiology) will have to remain unfilled.

58. Keeping in view the aforesaid disadvantages and drawbacks of the old Scheme, with effect from 1992, the University of Delhi has formulated a new procedure for admission and assignment of the institutions.

59. The salient features of the new Scheme are that an admission test is held and a merit list is prepared according to the marks obtained in the said test. The candidates, in order of merit, are required to appear before a Committee constituted by the Board of Research Studies for Medical Sciences. In the year 1992, the candidates with merit position 1 to 100 were to appear on 4th May, 1992 before the Committee, the candidates, with merit position 101 to 200 were to appear on 5th May, 1992 and candidates with merit position 201 to 300 were to appear before the Committee on 6th May, 1991. No individual communication was required to be sent to the candidates as these dates were indicated in the brochure itself. The concession which was given was that if any

candidate was unable to appear on the specified date, he or she was send a representative giving the reasons for the absence and further stating that the selection made by the representative would be final and binding on the candidate.

The Scheme further provides as follows:-

"When a candidate appears before the aforesaid Committee he/she would be informed of the available subjects and institutions in which the courses are available. From among the subjects and the institutions available at the time of his/her counseling, he/she would be entitled to select only one subject and one institution and he/she would be admitted to the said subject in the said institution. A candidate so admitted to a particular subject and assigned to a particular institution will not be entitled to seek any change of subject or institution at all. No request for change of subject or institution would be entertained.

If any seat falls vacant in any subject in any institution the same would be filled up from the waiting list strictly in the order of merit in the same manner as mentioned above. The dates of counselling for the candidates in the waiting list would be intimated to them by registered post and also displayed on the Notice Board of the Faculty.

While filling up such vacant seats on account of drop out, candidates already admitted to any subject in any institution will not be considered and only candidates in the waiting list will be considered.

A candidate who does not wish to be admitted to any of the subjects available at the time of his/her counseling but would like to join a particular subject only, may give in writing to the said effect'. Such candidate would forfeit his/her right to admission to any subjects available at the time of his/her counseling and will not be admitted to any subject. He/she will be considered for admission to the subject opted for by him/her if any seat falls vacant in the same subject in the subsequent counseling's in order of merit."

60. In simple words the Scheme which is now promulgated is like a chart in a cinema theatre. Just as the ticket vendor in a cinema theatre has a chart of the seats available to be sold to the customer, similar is the position under the new

procedure. Just as the customer, according to his position in the queue, has an option to make a selection out of the available seats, similarly, the candidate, according to his merit, has an option to select the course and the institution which is available when his turn comes for making the selection.

61. In the affidavit in reply, the merits of the scheme have been indicated. It is contended that under the present Scheme, there will be none or little wastage of seats because when the seats fall vacant, the same would be filled from the waiting list and the waiting list would consist of students who have not secured admission to any course. Secondly, the benefit of the new Scheme is that it ensures that students already admitted to different courses continue their studies uninterruptedly and further as and when seats fall vacant in any subject on account of drop-outs, the same will be promptly filled up by students who are not undergoing any course. Thirdly, there will now be adequate and proper patient care in the hospitals concerned. It is explained that if Post Graduate seats remain unfilled, then to that extent there is shortage of doctors to attend to the patients in the institutions, hospitals concerned.

62. Another benefit of the Scheme which has been pointed out is that at the time of counseling, a candidate is informed as to the seats which are available and also the institutions which he can join. The choice now being provided to the candidate is of proper and informed choice, unlike the blind choice in the past. The present Scheme, according to the respondents, is more reasonable and fair to the students. Furthermore, if the student wants to specialize in a particular subject only, he has an option to do so because he is entitled to give in writing that he should be considered for admission for the particular subject only with the result that whenever a seat in that subject falls vacant, he will be considered for that subject in order of merit.

63. Two other reasons in support of the new Scheme which have been indicated by the University are that even in the All India Scheme of Post Graduate Medical Education approved by the Supreme Court, the students are not allowed to change the subjects while filling up drop-out vacancies. Furthermore, even in the Indian Institute of Technologies in which a common entrance examination is held for various seats and institutions, students are not permitted to shift from subject to subject or institution to institution, as and when vacancies arise. The new scheme now promulgated is, therefore, according to the respondents, in pari materia with the scheme which is enforced for

admission to I.I.T.

64. Mr. Rohtagi, on behalf of the petitioner, however, contended that the new Scheme ignores the relative merit of the candidates. It is submitted by the learned counsel that in the present case, for no fault of the petitioners, they are being denied admission to courses of their higher preference. The examination for the All India quota was held on 19th January, 1992 and the result was declared on 26th March, 1992. On 18th May, 1992, first list was announced and the last date for reporting of the candidates was 9th June, 1992. Except in Delhi, a second list was issued on 26th July, 1992. On 30th July 1992, the Delhi University informed the D.G.H.S. as to the All India vacancies which were available. Thereafter, a second list has been issued on 28th August, 1992. The submission of Mr. Rohtagi is that any seat of All India quota which falls vacant should ordinarily go to the local candidates and persons of higher merit are entitled to a first choice.

65. It is no doubt true that in the Scheme, as formulated by the Supreme Court, it is contemplated that the admissions to the University from the local candidates should commence only after the All India quota seats are filled or are made available to the local candidates. This has not happened in the present case because the counseling was over, as far as the local candidates are concerned, on 6th May, 1992 and thereafter any seats which fall vacant are to be filled from the candidates who are on the waiting list. The petitioners have, however, secured admissions to various courses. The main departure which has been made from the old Scheme now is that the change of subjects is completely ruled out. If the petitioners were very keen in studying a particular subject then, according to the new Scheme, the petitioners should not have chosen any course and could have invited on their names being retained on the waiting list. The petitioners chose not to do so. They want to eat their cake and have it too. The petitioners accepted the best subject and/or institution which was available at the time of counseling and now if any fortuitous vacancy has arisen, we do not see as to how the petitioners can make any grievance.

66. It is no doubt true that the admission is to be granted only on the basis of merit. On the day when the counseling concludes, all the seats which are available are filled. It cannot be said that at that point of time any seat has been filled on basis other than merit. Thereafter if any vacancy arises, then that is only in the fortuitous circumstances which occurs. The percentage of such seats

which become available by reason of drop-outs is very insignificant, but if change of course is allowed, the entire admissions become unsettled.

67. It is not as if the candidates who are in the waiting list are not meritorious. It is not easy to secure admission, firstly, to Under Graduate Medical Courses. Thereafter, it is only the more meritorious doctors who have taken the entrance/screening examination and have secured good marks who are put on the merit list out of which a waiting list is prepared. For the fortuitous vacancies which occur, the rival claimants, therefore, are the meritorious and more meritorious candidates. While no system can ever be perfect, we are firmly of the opinion that the present scheme or procedure which has been devised will cause the least amount of dislocation and is more beneficial to the candidates as well as to the institutions to which they are assigned.

68. It is true that some of the candidates may feel that hardship is being caused to them because the vacant All India seats were not made available to them. It is, however, to be borne in mind that it is not for the Court to lay down any educational policy. The Court has a limited role to play. Its function is to see whether the policy which is formulated, in a case like this, is fair or is it arbitrary. Educational policies are laid down by persons who are experts in their field and as held by the Supreme Court, the Court should be slow in interfering in such matters (See *Mr. Bhushan Uttam Khare v. The Dean, B.J. Medical College*,²³ It has also been held by the Supreme Court in *Kumari N. Vasundara v. State of Mysore*,²⁴ that hardship in an individual case cannot be a test for determining the validity of a Scheme. Dealing with the question of selection of candidates to Pre-Professional course in Government Medical Colleges, it was observed by the Supreme Court as follows :-

"But cases of hardship are likely to arise in the working of almost any rule which may be framed in selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule, the petitioner has to approach elsewhere because, it relates to the policy underlying the rule."

69. Before concluding, reference may usefully be made to the observations of the Supreme Court in Dr. Ajay Pradhan's case (supra) wherein it has been held that there is no question of a right of admission to a seat falling vacant in the midst, or towards the end of, the academic session. The Court, of course, held

that normally the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter which means that if some drop-outs are there, then candidates may be selected from the waiting list but such admission in the midst or towards the end of the academic year is not by way of a right.

70. As already noticed, on 28th August, 1992, the second list has been issued in regard to All India quota. The candidates are required to join by the 15th of September, 1992. In the past, the D.G.H.S. has been issuing more than two lists in an attempt to fill all the seats within the quota.

71. While every effort should be made that the seats falling within the quota do not remain unfilled, nevertheless the time schedule laid down by the Supreme Court for filling the seats cannot be ignored. If a seat is not filled from the All India quota it is not as if that seat is never filled and remains vacant. Any seat which is not filled from the All India quota goes to the local candidates. In view of the fact that the admission of the local candidates is to start only after the All India quota has been filled means that if there are vacancies arising from the drop outs of the All India quota, the same should be available with the local candidates. The practice which is now being followed by the D.G.H.S. is that it does not release the unfilled seats, but it keeps on issuing further admission lists. This practice is clearly contrary to the letter and intent of the time schedule laid down by the Supreme Court. It has been contended by Sh. Mariaputham that due to the delay on the part of the D.G.H.S. in communicating the Delhi University of the release of the seats from the All India quota, the said seats are not offered to the local candidates and this, ultimately, results in the seats remaining unfilled.

72. The only way in which the aforesaid difficulty can be overcome is that there should be an automatic surrender of seats which are unfilled in the All India quota. In Dinesh Kumar's case (supra), detailed time schedule was indicated. The last date for granting admission to the candidates is to be 31st March. This can be extended by seven days by way of condonation for good and sufficient reason. It must follow, therefore, that any seats which are not filled in the All India quota by 7th of April must be regarded as being automatically surrendered. They would thereafter be available to the local candidates. It is open to the D.G.H.S. to issue as many lists as it may deem fit and proper after the holding of the exam, but in no case can they issue any list in such a manner

which enable students from joining after the 7th day of April of each academic year. In other words, they should exhaust their quota before 7th April of each year and in case their quota is not exhausted either because the candidates do not join or because the allocation is not made, then the unfilled seats would automatically deemed to have been surrendered by them and would be available to the local candidates.

73. In the year 1992, therefore, as a second admission list has already been issued and the last date for the candidates to join is 15th September, 1992, therefore if any seats in the All India quota remain vacant or unfilled after 15th September, 1992, then the same must be regarded as having been surrendered to be filled by the local institutions.

74. Under the new policy, when the counseling takes place, it may happen that a subject to one's liking is not available to a candidate. The candidate may, if he so desires, choose not to accept any of the available seat and may like his name to be placed on the waiting list. The practice which is now being followed is that when the name of such a candidate is placed on the waiting list, he is required to indicate choice of one subject. In our opinion, such restriction is clearly unreasonable. When a candidate opts not to accept a degree or diploma course which is offered to him and in first instance prefers to be placed on the waiting list, there is no reason then as to why he should be subjected to any further restriction. All candidates who are on the waiting list should be treated at par. A candidate who has never been offered any subject and was not called for counseling but is placed on the waiting list is entitled to seek admission to any of the seats which fall vacant thereafter. He has a choice out of various seats which may be available due to drop outs. Just as such a candidate, on the waiting list, is not restricted to any one or two subjects, similarly a candidate who, during counseling, expresses his desire to be placed on the waiting list and not to be allocated any subject, should be given an option of choosing the seats as and when they fall vacant and are made available to candidates who are in the waiting list in order of merit. To this extent only, the Scheme is arbitrary and it must follow from this that those candidates whose names have been placed on the waiting list or will be placed in the waiting list in future, they shall be free to choose any of the rejects or institutions which may become available. In order of merit. The restriction of the subject, in other words, which is indicated by them at the time of counseling, will no longer be binding on them.

75. In brief, our conclusions in these writ petitions are as follows:

- a) The time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case (supra) for admission to Post Graduate Courses should be strictly adhered to.
- b) The admissions will first be made to the All India quota.
- c) Seats which are unfilled in the All India quota will automatically lapse and will be available for the local candidates.
- d) No change of course or hospital is allowable to the candidates who have already secured admission.
- e) The courses will commence after all the admissions have been completed according to the time schedule fixed by the Supreme Court. If due to any error or otherwise any vacant seat is to be filled, the same should be done within two months of the start of the course. All admissions must come to an end thereafter.
- f) The order dated 10th July, 1991 of the Supreme Court has been misconstrued by the authorities. There is no departure from the time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case, 1987(4) SCC 459 and the date of 7th of February mentioned in the order of 10th July, 1991 pertains only to the State of Goa who was the applicant when that order of 10th July, 1991 was passed.

76. For the aforesaid reasons, we conclude that in respect of the examination held in 1991, no relief can be granted to the petitioners and we direct that no fresh admission/change of course in respect of the said year should be granted. In respect of the examination held in 1992, the list of 28th August, 1992 issued by the D.G.H.S. will be given effect to, but after 15th of September, 1992 the seats, which remain unfilled, will automatically lapse to Delhi University. These seats will be allocated to the candidates in the waiting list on counseling to be held on or before 30th September, 1992. All admissions for the year 1992 in Delhi University will close on 30th September, 1992. For the year 1993, we direct that the schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case (supra) will be strictly adhered to by the D.G.H.S. as well as by the Delhi University. Any seats which are not filled by the D.G.H.S. according to the time schedule shall stand automatically released and would be available to the local candidates. As in the case of I.I.T., the Delhi University may consider

indicating, in the brochure itself, the dates when the results will be declared, counseling takes place and admission closes.

77. Before concluding, we would be failing in our duty if we do not record our appreciation for the hard work put in and the valuable assistance rendered to us by the counsel for the parties.

The writ petitions are disposed of in the aforesaid terms. There will be no orders as to costs.

Petition disposed of.

Cases Referred.

1. 1984(3) SCC 654,
2. , 1987(4) SCC 459.
3. 1988(2) SCC 572,
- 4 1988(4) SCC 27,
5. 1990(4) SCC 624
6. 1990(4) SCC 627 : 1991(1) S.C.T. 373,
7. (C) No. 1215 of 1990
8. Today 1992 SC 422 : 1992(2) SCT 292
9. Writ Petition No. 1154 of 1990
10. (Writ Petition No. 1215 of 1990 dated January 10, 1991)
11. JT 1992(4) SC 576.
12. U.P., JT 1992(4) SC 581 : 1992(3) SCT 513.
13. 1988(4) S.C.C. 514
14. 1979(1) S.C.C. 572.
15. 1981(2) S.C.C. 484.
16. 1983(3) S.C.C. 517,

17. 1981(1) S.C.C. 722,
18. AIR 1971 Supreme Court 2303.
19. AIR 1989 Supreme Court 1801,
20. AIR 1987 Madras 22
21. AIR 1990 Punjab & Haryana 238
22. JT 1989 (Supp.) SC 2.
23. 1992(2) SCT 177 : JT 1992(1) SC 583).